

REMARKS

Claims 1, 4-11, 14, 15, and 18-22 are pending in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented above, with an appropriately defined status identifier. In the present amendment, Claims 1, 11, 14, 18, 19, and 22 are amended. No new matter has been added by way of amendment. Support for the amendments may be found throughout the application as originally filed.

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

I. Claim Rejections – 35 U.S.C. § 102(b)

In the Office Action, claims 1, 4, 6-10, 14-15, 20, and 22 stand rejected under 35 U.S.C. § 102(b) as anticipated by Cantin *et al.* (U.S. 5,922,764). In view of the present amendments, Applicant respectfully traverses the rejection of claims 1, 4, 6-10, 14-15, 20, and 22.

In order to establish a *prima facie* case of anticipation, a cited reference must teach each and every limitation of the rejected claims (MPEP 2131). Cantin neither expressly nor inherently teaches each and every limitation of independent Claims 1, 11 and 14. Amended claims 1 and 11 recite a method for raising serum DHEA levels in an individual comprising (a) measuring the level of DHEA or DHEA-S in the individual; and (b) applying a magnesium-containing composition to the individual's skin. The composition comprises magnesium chloride, a solvent, a gelling agent and glycerin. *Cantin contains no teaching regarding the step of measuring of DHEA or DHEA-S levels in an individual.* Accordingly, these references cannot anticipate claims 1 and 11 and claims depending therefrom.

Amended claim 14 recites a composition consisting of magnesium chloride, water, a gelling agent, and glycerin. The transitional phrase "consisting of" excludes any element, step, or ingredient not specified in the claim. *In re Gray*, 53 F.2d 520, 11 USPQ 255 (CCPA 1931);

MPEP 2111.03. Cantin does not teach a composition which consists of magnesium chloride, water, a gelling agent, and glycerin. Furthermore, Cantin is not enabling for compositions consisting of magnesium chloride, water, a gelling agent, and glycerin. A person of ordinary skill in the art, reading the Cantin disclosure as a whole, would not be in possession of the claimed invention. From the outset, the disclosure of Cantin states that the invention is directed to

[A] gel composition containing at least one cosmetic and/or dermatological active agent, at least one electrolyte, cetylhydroxyethyl cellulose and water useful for treating the skin, scalp, hair, mucous membranes and/or nails.
(col. 1, lines 7-11, emphasis added).

Thus, the teachings in Cantin direct the person of ordinary skill in the art to include elements not found in the instant claimed compositions, *i.e.*, a cosmetic or dermatological active agent. Therefore, Cantin cannot anticipate the invention of claim 14 and claims depending therefrom. Accordingly, Applicant request withdrawal of the rejection under 35 U.S.C. § 102(b).

II. Claim Rejections – 35 U.S.C. § 103

Claims 1, 4-11, 14-15, and 18-22 are rejected under 35 U.S.C § 103(a) as being unpatentable over Cantin in view of Alban *et al.* (US 5,420,118). In view of the present amendments, Applicant respectfully traverses the rejection of claims 1, 4-11, 14-15, and 18-22.

In order to establish a *prima facie* case of obviousness, three criteria must be met:

(1) there must be some suggestion or motivation to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all of the claim limitations. (MPEP 2142.)

Alban discloses a skin care composition comprising a humectant, a gelling agent including methyl cellulose, and a silicone component. Neither Cantin nor Alban, either singly or in combination, teach a method for raising serum DHEA levels in an individual comprising (a) measuring the level of DHEA or DHEA-S in the individual; and (b) applying a magnesium-

containing composition to the individual's skin. Both references lack any disclosure of a method having both of these steps. Likewise, the references, either singly or in combination, do not teach a composition consisting of magnesium chloride, water, a gelling agent, and glycerin, as required by independent claims 14 and 19.

Furthermore, Alban is directed solely toward providing cosmetic compositions with improved feel and residue characteristics. Therefore, neither its teachings nor the knowledge of one of ordinary skill in the art provide motivation to modify the compositions described in Cantin to only consist of magnesium chloride, water, a gelling agent, and glycerin. Thus, composition claim 14 and method claim 19 are nonobvious over Cantin and Albin. Neither Alban nor the combination of Cantin and Alban provides a *prima facie* case of obviousness. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

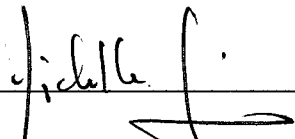
III. Conclusion

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted,

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